

REMARKS

This Amendment is submitted in response to the Office Action mailed on March 26, 2007. Claims 1, 2, 13 and 16 have been amended, and claims 22-25 stand withdrawn pursuant to a restriction requirement raised by Examiner. Claims 1-21 remain pending in the present application. Applicants appreciate Examiner's combination of Species A and B and the examination of same. Examiner's indication of the allowability of claims 14 and 15 is noted and appreciated. In view of the foregoing amendments, as well as the following remarks, Applicants respectfully submit that this application is in complete condition for allowance and requests reconsideration of the application in this regard.

Claim 16 has been amended as suggested by Examiner to overcome the objection to that claim. Claim 13 has been amended to correct a typographical error.

Claim 1 stands rejected under 35 U.S.C. §102(b) as being anticipated by Jacobson, U.S. Patent No. 4,545,374. Claims 2-13 and 16-21 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Jacobson in view of Simonson, U.S. Publication No. 2003/0083688. Applicants respectfully traverse these rejections for the reasons set forth below and respectfully request that the rejections be withdrawn.

In particular, the Examiner will note that independent claim 1 recites that the blade member is slidably positionable over the placement wire. Independent claim 2, as amended herein, recites that the dissector member is slidably positionable over

the first and second wires. Lastly, independent claim 16 recites that the blade member is slidably positioned over the first wire. This aspect of the present invention is described, in one embodiment, at Page 6, line 27 through Page 7, line 4 and Page 10, lines 8-18 of Applicants' disclosure, for example. Applicants respectfully submit that the combination of elements recited in each of independent claims 1, 2 and 16 is not fairly taught or suggested by the prior art of record and the rejections should be withdrawn.

Applicants respectfully submit that in the surgical instrument of the primary Jacobson reference, the asserted "blade member" (18) as shown in Fig. 8 is a rongeur forceps that is inserted down the cannula (11) into the disc to remove the disc nucleus material (see Col. 7, lines 40-43). Applicants respectfully submit that the rongeur forceps (18) of Jacobson is not slidably positioned over any wire as recited in each of independent claims 1, 2 and 16, but rather is maneuvered by the surgeon within the cannula to remove the nucleus material (see Col. 7, lines 51-60). Consequently, for at least this reason, Applicants respectfully submit that each of independent claims 1, 2 and 16 clearly define over Jacobson taken alone, or in combination with the other prior art of record and the rejections should be withdrawn.

Moreover, as each of dependent claims 3-15 and 17-21 depend from allowable independent claims 2 and 16, respectively, and further as each of these claims recites a combination of elements not taught or suggested by the prior art of record, Applicants submit that these claims are allowable as well.

Application No. 10/726,329
Amendment Dated 9/26/07
Reply to Office Action of 3/26/07

Conclusion

In view of the foregoing response including the amendments and remarks, this application is submitted to be in complete condition for allowance and early notice to this affect is earnestly solicited. If there is any issue that remains which may be resolved by telephone conference, the Examiner is invited to contact the undersigned in order to resolve the same and expedite the allowance of this application.

Please see the electronic fee calculation sheet for the charge in the amount of \$1,020 for the three months extension fee as required by 37 C.F.R. § 1.17(a)(3). If any other fees are necessary, the Commissioner is hereby authorized to charge any underpayment or fees associated with this communication or credit any overpayment to Deposit Account No. 23-3000.

Respectfully submitted,

WOOD, HERRON & EVANS, L.L.P.

/David H. Brinkman/

David H. Brinkman, Reg. No. 40,532

2700 Carew Tower
441 Vine Street
Cincinnati, Ohio 45202
(513) 241-2324 - Voice
(513) 421-7269 - Facsimile